



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contract Services Company, Inc.--Request for
Reconsideration
File: B-226774.4
Date: May 6, 1988

DIGEST

Prior decision holding that bid was properly rejected as nonresponsive where the required bid bond amount exceeded the corporate surety's underwriting limit and no evidence of reinsurance was provided with the bid is affirmed on reconsideration where protester merely reiterates arguments raised in initial protest and fails to show error of fact or law in prior decision.

DECISION

Contract Services Company, Inc. (CSC) requests reconsideration of our decision in Contract Services Co., Inc., B-226774.3, Feb. 8, 1988, 88-1 CPD ¶ 119, denying its protest concerning rejection of its bid under invitation for bids (IFB) No. DTCG41-B-0006, issued by the United States Coast Guard for facility maintenance services at the Reserve Training Center, Yorktown, Virginia. We affirm our initial decision.

The IFB required bids to be accompanied by a bid guarantee in the amount of 20 percent of the total bid price for the "definite items" only. CSC's bid for the "definite items" was \$1,200,202, while the second low bid for these items was \$1,586,907. On its face, CSC's bid guarantee, a bid bond executed by CSC and American Surety and Casualty Company, stipulated the required percentage. However, the Coast Guard's review of the list of approved sureties in Treasury Circular No. 570 showed that the underwriting limitation of CSC's surety was \$225,000. This was \$15,040 less than the required bid guarantee amount of \$240,040.

The Coast Guard subsequently notified CSC that it had determined CSC's bid to be "nonresponsive based upon an insufficient bid guarantee." CSC then formally protested this decision to the Coast Guard. CSC alleged that

042090/135759

although American had an underwriting limitation of \$225,000, the surety had a "valid reinsurance policy" in effect with Employees Reinsurance Corporation that permitted American to issue bonds up to \$2 million over its underwriting limitation. CSC attached its surety's "reinsurance policy" to the Coast Guard protest. The Coast Guard denied CSC's protest, stating that "while the reinsurance agreement [appeared] to have been in effect" at the time of bid opening, it was not documented on the prescribed standard form (SF 275) and had not been submitted with CSC's bid. CSC's protest to our Office followed.

We denied CSC's protest based on our conclusion that the Coast Guard properly found the bid bond unacceptable, and CSC's bid therefore nonresponsive, because the required bond amount exceeded the surety's underwriting limit and no reinsurance agreement covering the excess amount had been submitted with the bond at bid opening.


In its reconsideration request, CSC essentially takes issue with the central conclusion of our decision--that a bid which includes the required bid guarantee executed by a corporate surety in excess of its underwriting limitation without evidence of reinsurance in the bid is nonresponsive. While it is clear that CSC strongly disagrees with our conclusion, it merely repeats its prior arguments in support of the opposite conclusion. We have carefully reviewed the record in the context of the protester's arguments and, as explained below, we see no basis upon which to alter our conclusion.

As discussed in our prior decision, whether a corporate surety is listed in the Treasury Circular is a matter of responsiveness. Siska Construction Co., Inc., B-218428, June 11, 1985, 85-1 CPD ¶ 669. In our view, as a result of the listing, a surety is authorized to issue bid bonds up to the underwriting limit shown in the Circular. If the required bond amount exceeds its underwriting limit, the surety must submit with its bond evidence of adequate reinsurance documented on an SF 275. CSC disagrees, arguing that a surety listed in the Circular is authorized to issue a bid bond in any amount, without regard to its underwriting limit. We find this argument unpersuasive because it is inconsistent with the purpose of the Treasury listing, which, as CSC states, is to give assurance to the contracting agencies as to a surety's acceptability. We recognize that information on an individual surety may be submitted after bid opening to enable the contracting officer to determine whether the surety is responsible. T&A Painting, Inc., B-224222, Jan. 23, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 86. This is not the case with a corporate surety. When a corporate surety is used by a government bidder, the

contracting officer need only look at the Treasury Department list for determining whether the surety is responsible. The Treasury list itself establishes whether the corporate surety is authorized to issue bonds for government contracts and the amount of such bonds.

Finally, to the extent that Federal Acquisition Regulation (FAR) § 28.202-1(a)(4) refers to the submission of reinsurance agreements within 45 days after a bond is executed, we believe that provision relates only to performance and payment bonds, which may be furnished after award, in view of the language in the provision which refers to the "contractor" meeting the bond requirements of the "contract." See also FAR § 28.102-1(b). To conclude otherwise would permit the bidder to make its bid responsive after bid opening and thus would be inconsistent with the sealed bidding system. See Siska Construction Co., Inc., B-218428, supra.

Our prior decision is affirmed.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, stylized "M" and "F".

Acting Comptroller General
of the United States